(26)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.329 of 1992

Ganpat Ram
S/o Bhagatram Kewat
Aged about 28 years, R/o Village: Bhitoni,
Police Station: Malkharoda, Distt.: Bilaspur (C.G.)

- Versus -

State of M.P. (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

8th.2003

HON'BLE THE CHIEF JUSTICE

I agree

Sd/-
Chief Justice

POST FOR JUDGMENT ON 8th AUGUST, 2003

Sd/-
JUDGE
16th.2003

(37)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Division Bench*: Hon'ble Shri K.H.N. Kuranga, C.J.
and Hon'ble Shri L.C. Bhadoo, J.

Criminal Appeal No.329 of 1992

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Aged about 28 years, R/o Village: Bhitoni,
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- Versus -

State of M.P. (now Chhattisgarh)

Present: -

Shri Abhay Tiwari, Advocate: For the appellant

Miss Sharmila Singhai, Deputy G. A.: For the State / respondent.

JUDGMENT

(Delivered on 19th August, 2003)

The following judgment of the Court was delivered by *Justice L.C.Bhadoo*: -

1. Accused Ganpatram has preferred this criminal appeal under Section 374 (2) of the Cr.P.C., being aggrieved by the judgment dated 30th January 1992, passed by the 5th Additional Sessions Judge, Bilaspur, in Sessions Trial No.61/89, by which the learned Additional Sessions Judge after holding the accused / appellant guilty of the offences punishable under Sections 302 and 323 of the I.P.C. sentenced him to undergo imprisonment for life and to undergo R.I. for six months respectively and directed that both the sentences would run concurrently.

2. The case of the prosecution, in brief, is that on 5-9-88 at about 9 p.m. the accused / appellant came to the house of Budhwara Bai

(39)

and asked her to exchange her land with his land. But, Budhwara Bai was not prepared to exchange the land. When she refused to accede to the request of accused / appellant Ganpatram, he entered into the house of Budhwara Bai and started beating her. At that time his brother Bhondu came and tried to intervene. The accused / appellant started assaulting his brother Bhondu and his wife Shanti Bai with a spade. Dhanai Bai, mother of the accused / appellant also came there and started intervening. The accused / appellant assaulted Dhanai Bai on her face with a spade and thereafter after throwing the spade he ran away. Next day Shanti Bai and Budhwara bai took Dhanai Bai to the Police Station Malkharoda and lodged the report Ex.-P/10. The In-charge Station House Officer B.R. Mandavi sent Dhanai Bai with a requisition Ex.-P/11 for medical examination to Primary Health Centre, Malkharoda. He also sent Shanti Bai for medical examination. Dr. N.P. Mishra examined Dhanai Bai and prepared the injury report Ex.-P/11-A. Shanti Bai and Budhwara Bai were also examined and medical reports Ex.-P/12-A and Ex.-P/13-A respectively were prepared. The S.H.O. also sent Bhondu for medical examination with a letter Ex.-P/14. Dr. N.P. Mishra also examined him and gave his report Ex.-P/14A. Dr. N.P. Mishra admitted Dhanai Bai in the hospital on 6-9-88 for treatment. During the treatment in the Primary Health Centre, Malkharoda on 14-9-88 Dhanai Bai succumbed to the injuries sustained by her. Therefore, intimation of death (Ex.-P/18) was sent to the P.S. Malkharoda. On receiving this intimation, the S.H.O. recorded the

(39)

merg intimation Ex.-P/17. Bed head tickets regarding treatment of Dhanai Bai were seized by the Investigating Officer which are Ex.-P/6-A and Ex.-P/6-B. On 15-9-88, Dr. N.P. Mishra conducted the postmortem on the dead body of deceased Dhanai Bai and prepared postmortem report Ex.-P/19.

3. On 6-9-88, the Investigating Officer took into possession the Sari of deceased Dhanai Bai under Ex.-P/4 and found that it was stained with blood. The plain soil and blood stained soil were seized from the scene of occurrence under Ex.-P/3. The weapon of offence i.e. spade was seized on 7-9-88 under Ex.-P/1. The clothes of Dhanai Bai and spade were sent to the doctor for his opinion and the doctor gave his opinion Ex.-P/15-A. He also advised for chemical examination of the articles. These articles were sent for the chemical examination and as per the report of the chemical examiner and the report of serologist human blood was found on the sari of the deceased. Patwari Shyamlal prepared the site map Ex.-P/9.

4. After completion of the investigation the charge sheet was filed against the accused / appellant in the Court of Additional Chief Judicial Magistrate, Bilaspur who in turn committed the case to the Sessions Court at Bilaspur and the 5th Additional Sessions Judge, Bilaspur received the file on transfer from the Sessions' Court. The learned Additional Sessions Judge after hearing the Additional Public Prosecutor and the counsel for the accused and after perusal of the records concluded that there was material on record to frame charges under Sections 302 and 323 of the I.P.C.

(90)

against the accused and accordingly framed the charges and read over and explained the same to the accused / appellant who denied the charges and claimed to be tried.

5. The prosecution in order to prove the charges against the accused / appellant examined in all 12 witnesses. The statement of the accused / appellant was recorded under Section 313 of the Cr.P.C. He denied the prosecution evidence and stated that Budhwara Bai, Dhaneshari Bai, Shanti Bai and Bhondu all had assaulted him for which he had also made a report to the police. He stated that he is innocent and he has been falsely implicated in the crime. The learned Additional Sessions Judge after hearing the Additional Public Prosecutor and the counsel for the accused and placing reliance on the prosecution evidence convicted and sentenced the accused / appellant for the offences under Sections 302 and 323 of the I.P.C. in the aforesaid manner.

6. We have heard the learned counsel for the accused / appellant Mr. Abhay Tiwari and Deputy Government Advocate for the State Miss Sharmila Singhai.

7. As far as the nature of the death of Dhanai Bai being homicidal is concerned, it was not disputed. Dr. PW-12 N.P. Mishra has stated that on 6-9-88 he examined the injuries of Dhanai Bai and found that there was one incised wound on the face of Dhanai Bai in the size of 9" x ½ " x 1/2 " x ½ " which was oblique in nature and irregular in shape. This injury was up to the upper portion of the nose. The base bone of the nose was cut and separated and the nose was hanging. The bone under both the eyelids was cut into

(41)

pieces. All the injuries were grievous in nature. The doctor stated that if any complication had not occurred then she could have become alright within 30 days. The injury was caused by sharp edged weapon and was sufficient to cause death in the ordinary course of nature. He has further stated that on 15-9-88 he conducted the postmortem on the body of deceased Dhanai Bai and noticed that clotted blood was present in the pulmonary artery trunk. Carotid artery was full of blood. The membrane was ruptured and it was dry and red in colour. Maxilla bone was fractured. The upper jaw was moving right and left. The bone of the palate was also fractured. In the opinion of the doctor, Dhanai Bai died on account of the injuries on the face and on account of the clotted blood which was present in the pulmonary trunk. Due to clotting of blood, the artery was blocked, blood was also blocked and she died because of that. According to the doctor, the death of the deceased was homicidal. In view of the above evidence, it is established that the nature of the death of deceased Dhanai Bai was homicidal. PW-12 Dr. N.P. Mishra has also stated that he examined the injuries of Bhonduram and prepared the report Ex.-P/14-A. He also examined the injuries on the body of Shanti Bai and prepared the report Ex.-P/12-A. He also examined Budhwara Bai who was complaining about pain and prepared the report Ex.-P/13-A.

8. Now coming to the question of involvement of the accused / appellant in the commission of the murder of Dhanai Bai and causing simple injuries to other persons i.e. Shanti Bai, Bhonduram

(42)

and Budhwara Bai is concerned, PW-1 Shanti Bai is the eyewitness and she has stated that on the fateful day in the night the accused / appellant came to the house of Budhwara Bai. He called Budhwara Bai, but Budhwara Bai replied that she was not well, therefore, whatever he wanted to say, he could speak from there. Accused Ganpat asked Budhwara to exchange her agricultural land with his land which she refused. Her husband Bhondu told Ganpat that he should have come during the day and could have sorted out the matter. But, the accused / appellant started beating her husband and threw him on the ground. Lalitram and Jagatram came and saved him. The accused / appellant also assaulted her with a spade on her head and assaulted Dhanai Bai with a spade on her face. Ramlal came and intervened. Blood started oozing out from the injuries of Dhanai Bai. The next day Budhwara Bai, Deendayal and Jagatram took Dhanai Bai to the Police Station and lodged the report. The testimony of this witness has been corroborated by her husband PW-2 and he has stated that when Budhwara Bai refused to exchange her land, the accused / appellant started abusing her and after entering the house of Budhwara Bai he started assaulting Budhwara Bai and when he intervened, the accused / appellant assaulted him also and threw him on the ground. His wife Shanti Bai, Budhwara Bai, Jagatu and Lalit came, intervened, and took away the accused / appellant, but he again came back and picked up the spade which was lying in the courtyard of the house of Deendayal and assaulted on the head of

(43)

Dhanai Bai. When Shanti Bai tried to intervene he assaulted her also and on account of that the teeth of Shanti Bai was broken.

9. PW-3 Budhwara Bai has also corroborated the testimony of these two witnesses and said that the accused / appellant assaulted Dhanai Bai with a spade. She was admitted to the hospital and after 5-6 days, she died in the hospital. PW-8 Shyam Kunwar has also corroborated the testimony of these two witnesses and said that the accused / appellant picked up a spade which was lying in the courtyard of Deendayal and assaulted Dhanai Bai which hit on Dhanai Bai's nose and head. When Shanti Bai tried to intervene, the accused / appellant also assaulted her with the same spade and thereafter the accused / appellant thrown the spade and ran away. In the cross-examination of these witnesses the learned counsel for the accused / appellant has not been able to elicit anything which makes the evidence of these witnesses unreliable or untrustworthy. The accused / appellant and the witnesses are closely related being brothers and sisters-in-law, therefore, there is no reason why all these witnesses should implicate the accused / appellant in a false case.

10. PW-4 Ali Baksh has stated that the clothes of the accused / appellant and spade were recovered in his presence under Ex.-p/1 and Ex.-P/2. The Investigating Officer PW-11 B.R. Mandavi has also proved the recovery of the spade and clothes and these clothes and spade were sent for chemical examination. The report of the serologist Ex.-P/20 reveals that Sari of the deceased was found stained with human blood. The spade was also found stained

(24)

with blood but its origin could not be determined as the blood was disintegrated. Therefore, there is ample evidence on the record by which it stands proved that the accused / appellant assaulted the deceased Dhanai Bai with a spade and as per the doctor's evidence the injury was sufficient in the ordinary course of nature to cause death. Therefore, the finding of the learned trial Court regarding the involvement of the accused / appellant in causing the death of the deceased and causing simple injuries to Budhwara Bai, Shanti Bai and Bhondu is based on legal evidence and we do not find any illegality or infirmity in the finding of the trial Court.

11. As far as the conviction of the accused / appellant under Section 302 of the I.P.C. is concerned, the learned counsel for the accused / appellant submitted that the deceased was closely related to the accused / appellant who is the son of the deceased and the dispute arose on account of refusal by Budhwara Bai to exchange her land with the land of the accused / appellant. When Budhwara Bai and others started intervening and Dhanai Bai also intervened all of a sudden the accused / appellant picked up the spade which was lying in the courtyard of Deendayal and assaulted Dhanai Bai. Therefore, there was no intention to kill his own mother and the offence only under Section 304 Part-II of the I.P.C. is made out.

12. We have gone through the evidence and record of the case. The argument of the learned counsel for the accused / appellant is not without force. It is true that the accused on the fateful day came and asked Budhwara Bai to exchange her land with his land which she refused, on which the accused / appellant started assaulting

Budhwara Bai and when Bhondu and his wife Shanti Bai tried to intervene then the accused / appellant also assaulted them and he left the scene. Thereafter he again came back. When Dhanai Bai started intervening, all of a sudden the accused / appellant picked up the spade which was lying in the courtyard of Deendayal and assaulted Dhanai Bai with a spade. It shows that the accused / appellant assaulted Dhanai Bai without any preplan or premeditation and in the facts and circumstances of the case it cannot be inferred that the appellant had any intention to murder Dhanai Bai because he picked up the spade all of a sudden and assaulted Dhanai Bai, therefore, it cannot be inferred that with the intention to murder Dhanai Bai the accused / appellant assaulted her or he caused such injury with the intention to commit her murder. Even other wise, Dhanai Bai died after 9 days in the hospital and Dr. PW-12 N.P. Mishra has stated that in the ordinary course if the proper treatment was given to Dhanai Bai she could have become alright within 30 days. He has further stated that Dhanai Bai died on account of clotted blood stuck in the pulmonary trunk and on account of that the flow of the blood stopped and she died. Therefore, injuries were not the direct cause of death.

13. In view of the above facts, it cannot be inferred that the accused / appellant caused the injury with the intention to murder Dhanai Bai. But, it can safely be inferred that while causing the assault on the head of Dhanai Bai with a spade the accused / appellant had definitely knowledge that by causing injury with a spade he may

(46)

cause the death of Dhanai Bai, therefore, the offence under Section 304(II) is made out.

14. In the result, the appeal of the appellant partly succeeds. His conviction under Section 302 of the I.P.C. is set-aside and in its place he is convicted under Section 304(II) of the I.P.C. and sentenced to undergo imprisonment for 10 years. His conviction and sentence under Section 323 of the I.P.C. are maintained. The accused / appellant is in custody since 1988 and thereby he has served almost 15 years of jail sentence and he has already undergone the sentence awarded to him, therefore, if the accused / appellant is not required in any other case, then he be set at liberty forthwith.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge
18 -08-2003

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